

SENATE BILL REPORT

SHB 1669

As Reported By Senate Committee On:
Judiciary, March 30, 2007

Title: An act relating to district and municipal court preconviction and postconviction probation and supervision services for persons charged with or convicted of misdemeanor crimes.

Brief Description: Concerning the district and municipal court's probation and supervision services.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Strow, Ericks, O'Brien, Rodne, Kirby, Haler, Eddy, Hinkle and Lantz).

Brief History: Passed House: 3/09/07, 97-0.

Committee Activity: Judiciary: 3/30/07 [DP, DNP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Murray, Roach and Weinstein.

Minority Report: Do not pass.

Signed by Senator Kline, Chair.

Staff: Lidia Mori (786-7755)

Background: An offender convicted of a misdemeanor or gross misdemeanor offense serves his or her confinement in a local jail and may be subject to probation with court-ordered conditions after release.

Generally, a person does not have a duty to protect others from the criminal acts of third persons. Washington courts have recognized an exception to this general rule where a special relationship exists between the person and the third party. Under this exception, a governmental entity can be held liable for the acts of a criminal offender it is supervising if the governmental entity fails to adequately supervise the offender and that lack of supervision results in harm to another person. Government liability in this context is based on the premise that the government has a "take-charge" relationship with the offender, and, therefore, must exercise reasonable care to control the known dangerous propensities of the offender.

Under the doctrine of judicial immunity, judges are provided with absolute immunity from civil liability for acts performed within their judicial capacity. Judicial immunity may also

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extend to governmental agencies or executive branch officials while performing judicial functions. Quasi-judicial immunity applies to persons performing functions that are so comparable to those performed by judges that they should share judges' absolute immunity while carrying out those functions. In the offender supervision context, court decisions have held that a probation or parole officer's duties in supervising an offender and monitoring the offender's compliance with conditions of release are not entitled to quasi-judicial immunity.

In a 2005, unpublished Court of Appeals decision, *Benskin v. Fife*, the Court addressed the issue of the liability of a city probation officer for the acts of an offender on probation for a DUI offense. The Court held that the relationship between the municipal court's probation department and the supervised probationer did give rise to a "take-charge" relationship, which imposes a duty on the probation department to protect the public from foreseeable behavior associated with the conditions of probation. The Court also found that judicial immunity, or quasi-judicial immunity, did not apply to the actions of the probation department, even though the judge was the head of the probation department. The Court found that a judge acting as a probation department head is acting in an administrative capacity, not a judicial capacity, and that the probation officer's monitoring of the probationer is not analogous to a judicial decision to place a defendant on probation or revoke probation.

When a superior court judge orders supervision of a misdemeanor or gross misdemeanor defendant placed on probation, responsibility for the supervision falls initially on the Department of Corrections (DOC), but a county may elect to assume responsibility for the supervision of these offenders by contract with the DOC. The DOC and any county probation department under contract with the DOC are not liable for civil damages resulting from an act or omission in conducting superior court misdemeanant probation activities unless the act or omission constitutes gross negligence.

Summary of Substitute Bill: A limited jurisdiction court that provides misdemeanant supervision services is not liable for damages based on the inadequate supervision or monitoring of a misdemeanor defendant or probationer unless the inadequate supervision or monitoring constitutes gross negligence. "Limited jurisdiction court" means a district court or a municipal court, and anyone acting or operating at the direction of such court, including but not limited to its officers, employees, agents, contractors, and volunteers. "Misdemeanant supervision services" means pre-conviction or post-conviction misdemeanor probation or supervision services, or the monitoring of a misdemeanor defendant's compliance with a pre-conviction or post-conviction order of the court, including but not limited to community corrections programs, probation supervision, pretrial supervision, or pretrial release services. The act must not be construed to create a duty or affect judicial immunity.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: With the simple negligence standard, sending a letter to the wrong address could be seen as negligence. Judges aren't sentencing offenders to probation because of concerns about liability. So instead, they are sentenced to a period of

time in jail and that isn't going to change a person's behavior. A gross negligence standard still provides accountability. The policy of encouraging municipalities to do probation balances against the possible harm to people in terms of having to prove to a higher standard.

Persons Testifying: PRO: Gill M. Orr, Washington State Association of Outpatient Treatment; Thomas Carr, Seattle City Attorney, Association of Washington Cities; Karen Lewis, Island County District Court; Judge Brett Buckley, District and Municipal Court Judges Association.